

**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL CASE NO. 1:20-cv-00052-MR-WCM**

MICHAEL G. CAPPS,

Plaintiff,

vs.

**CHUCK HESTER,
THE DEPARTMENT OF INTERIOR,**

Defendants.

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ORDER

THIS MATTER is before the Court on the Defendants' Motion to Substitute the United States of America as Defendant [Doc. 16]; the Defendants' Motion to Dismiss [Doc. 17]; the Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment [Doc. 18]; the Defendants' Motion to Stay Lawsuit [Doc. 19] and the Magistrate Judge's Memorandum and Recommendation [Doc. 24] regarding the disposition of these motions.

Pursuant to 28 U.S.C. § 636(b) and the standing Orders of Designation of this Court, the Honorable W. Carleton Metcalf, United States Magistrate Judge, was designated to consider the Defendants' motions and to submit a recommendation for their disposition.

On December 30, 2020, the Magistrate Judge filed a Memorandum and Recommendation in this case containing conclusions of law in support of a recommendation regarding the Defendants' motions. [Doc. 24]. The parties were advised that any objections to the Magistrate Judge's Memorandum and Recommendation were to be filed in writing within fourteen (14) days of service. The period within which to file objections has now expired, and no written objections to the Memorandum and Recommendation have been filed.

After a careful review of the Magistrate Judge's Recommendation, the Court finds that the proposed conclusions of law are consistent with current case law.¹ Accordingly, the Court hereby accepts the Magistrate Judge's recommendation regarding the pending motions.

IT IS, THEREFORE, ORDERED that:

(1) The Memorandum and Recommendation [Doc. 24] is **ACCEPTED**;

¹ While Plaintiff asserts that Defendant Hester violated his Constitutional rights, Plaintiff does not present allegations or arguments sufficient to indicate to the Court that he seeks to assert that claim within the narrow confines of Bivens v. Six Unknown Agents, 403 U.S. 388 (1971). The Plaintiff, not having objected to the Magistrate Judge's conclusion that Plaintiff's allegations and arguments are insufficient to give notice of a Bivens claim, [Doc 24 at 11-12], seems to concede that he did not consider presenting such. Therefore, even given the great latitude that pro se litigants are allowed, the Court concludes that the Magistrate Judge's recommendation on this point is correct.

(2) The Motion to Substitute [Doc. 16] is **GRANTED**, and the United States of America is hereby **SUBSTITUTED** in the place of Defendant Hester for purposes of the Plaintiff's state constitutional claim and claim based on alleged violations of federal criminal statutes;

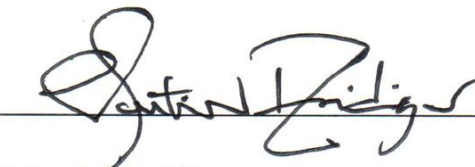
(3) The Motion to Dismiss [Doc. 17] is **GRANTED**, and the Plaintiff's claims against the Department of Interior and Chuck Hester are hereby **DISMISSED WITH PREJUDICE**;

(4) The Motion to Dismiss or, in the Alternative, for Summary Judgment [Doc. 18] is **GRANTED**, and the Plaintiff's claims against the United States are **DISMISSED WITHOUT PREJUDICE** for lack of subject matter jurisdiction; and

(5) The Motion to Stay Lawsuit [Doc. 19] is **DENIED AS MOOT**.

IT IS SO ORDERED.

Signed: February 1, 2021

A handwritten signature in black ink, appearing to read "Martin Reidinger", is written over a horizontal line.

Martin Reidinger
Chief United States District Judge

